

Attorney Docket No.47777-0005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Christian MAYAUD
Serial No. : 09/941,681
Filing Date : August 30, 2001
Title : A COMPUTERIZED PRESCRIPTION SYSTEM FOR
GATHERING AND PRESENTING INFORMATION
RELATING TO PHARMACEUTICALS
Examiner : Samuel G. Rimell
Group/Art Unit : 2165

Commissioner for Patents
Alexandria, VA 22313-1450

**DECLARATION OF ASSIGNEE
IN SUPPORT OF SUBMISSION OF
37 C.F.R. § 1.131 DECLARATION
FOR A NON-COOPERATIVE INVENTOR**

I, Ted W. Whitlock, declare and state as follows:

1. I am intellectual property counsel for Andrx Corporation, the parent corporation of and owner of Cybear, LLC. I am a Registered Patent Attorney, Registration No. 36,965. Cybear, LLC is the Assignee of the above captioned patent application (the '681 Application).
2. I am familiar with the prosecution of the '681 Application. I have met with and communicated with the named inventor Christian Mayaud, regarding his submission of facts and documents supporting his conception and diligence for the '681 Application.

3. On January 22, 2004, a 37 C.F.R. section 1.131 declaration executed by the inventor, Christian Mayaud, was filed (mail room date January 22, 2004) for the purpose of swearing behind a reference, Schrier, et al., U.S. Patent No. 5,833,599. On June 7, 2004, a second 37 C.F.R. section 1.131 declaration executed by said inventor, was filed (mailroom date June 7, 2004) for the purpose of swearing behind the said reference.
4. On July 15, 2004, in an interview in the United States Patent and Trademark Office, the Examiner agreed and noted in an Interview Summary, that “conception prior to the critical reference date under 37 CFR 1.131 was established.”
5. The documents filed in support of the above two 37 C.F.R. section 1.131 declarations, which were attached thereto, were obtained from the inventor Christian Mayaud.
6. Included in said documents was a copy of a page of Christian Mayaud’s personal calendar dated January 12, 1993 and marked Exhibit B. In the second 37 C.F.R. Section 1.131 declaration (dated June 4, 2004), at page 3, Christian Mayaud stated:

In further support of the date of this said meeting, attached hereto as Exhibit B, document no. POL 05667, is a copy of two pages from my personal calendar. In my writing there is displayed on the left side a morning entry, showing my “9:30” meeting (third party name and meeting location redacted) which date, printed on my calendar (redacted), is prior to December 13, 1993. This corroborates the date on the handout and the date the meeting took place prior to December 13, 1993. Other writings on this Exhibit B sheet reflect my notes of the parties in attendance at the meeting.

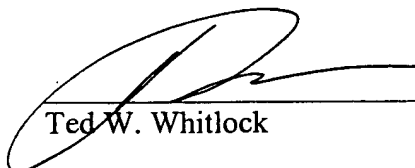
7. For the purposes of supporting diligence in this matter, I requested Christian Mayaud, and he agreed, to provide and did provide copies of his personal calendar, that were still in his possession, including the period of time of December 13, 1993 to October 28, 1994. These documents included the above referenced page dated January 12, 1993 from his personal calendar. As Christian Mayaud declared in his June 7, 2004, 37 C.F.R. 1.131 declaration, the January 12, 1993 personal calendar page was in his handwriting and made by him at or about the time indicated on the date of each page. It is my belief these personal calendar documents contain facts from the inventor relating to his diligence in prosecuting his above captioned patent application that are true and accurate.
8. Outside patent counsel prosecuting the above matter for Andrx Corporation reviewed every entry from said personal calendar with the inventor, Christian Mayaud, which relevant parts were recorded in a "proposed" 37 C.F.R. 1.131 declaration, which said counsel reviewed with Christian Mayaud.
9. On October 14, 2004, in an interview in the United States Patent and Trademark Office, the Examiner agreed to review "proposed" third 37 C.F.R. section 1.131 declaration and noted in an Interview Summary, that the evidence submitted in the interview for diligence "does establish sufficient evidence for diligence for the time period of December 13, 1993 to October 28, 1994."
10. The evidence submitted in said October 14, 2004 interview, was the "proposed" 37 C.F.R. section 1.131 declaration with supporting documentation, the relevant copies of pages from Christian Mayaud's personal calendar for the period of time December 13, 1993 to October 28, 1994.

11. On or about January 30, 1995, the named inventor, Christian Mayaud, executed an Assignment of his rights in U.S. Patent Application Serial No. 08/330,745 (the parent application to the '681 Application) to MED-E-SYSTEMS Corporation. Andrx Corporation, by assignments, is the present owner of all rights to the '681 Application.
12. In said January 30, 1995 Assignment agreement, the inventor, Christian Mayaud, agreed to "execute any and all lawful documents and papers... to any continuation... of the application... in the assignee, its successor or assigns."
13. On behalf of Assignee, Cybear, LLC, I have made numerous attempts, but have been unable to obtain the signature of the inventor, Christian Mayaud, on the 37 C.F.R. section 1.131 declaration, submitted for diligence. Notwithstanding the obligation of the inventor, he is not cooperative and will not sign the 37 C.F.R. 1.131 declaration for diligence.
14. This declaration is submitted in support of the Assignee, Cybear, LLC, executing the said proposed 37 C.F.R. 1.131 declaration for diligence on behalf of the inventor, in view of the fact the inventor is not cooperative and would not sign the said 37 C.F.R. 1.131 declaration.
15. On Monday, January 10, 2005 the undersigned, outside patent attorney Robert M. Schwartz, and Patent Agent David Barman an Andrx Corporation employee held a telephone conference with Examiner Rimmel of the above '681 application who agreed that in view of the non-cooperation of inventor, Christian Mayaud, the Assignee should submit a written statement explaining the facts that the inventor

was uncooperative and would not execute the 131 declaration and that the Assignee should execute the said 131 declaration on behalf of the said inventor.

DECLARATION

I, Ted W. Whitlock, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Ted W. Whitlock

Date: January 25, 2005